

REMARKS

Claims 1-37 are pending. Claims 1-3, 11-14, 20-22, 27-30 and 35-37 have been amended. Favorable reconsideration is requested.

Claims 11-19 and 27-37 were rejected under 35 U.S.C. § 101, under *In re Bilski*. The Examiner took the position that the steps are not tied to another statutory class, such as a machine. Appropriate ones of the rejected claims have been amended to even more clearly tie the steps of the claim to the underlying apparatus, namely the computerized trading system. Withdrawal of the rejection is respectfully requested.

Claims 1-5, 9-16, 19-23, 26-32 and 36-37 were rejected under 35 U.S.C. § 103(a) over U.S. Patent 5,806,050 (Shinn et al.) in view of U.S. Patent Publication No. 2002/0091623 (Daniels) and further in view of U.S. Patent Publication No. 2002/0076048 (Hars) and Official Notice. Claims 6, 17, 24 and 33-34 were rejected under 35 U.S.C. § 103(a) over Shinn et al. in view of Daniels in view of Hars in view of Official Notice, and further in view of U.S. Patent 5,212,731 (Zimmermann). Claims 7-8, 18, 25 and 35 were rejected under 35 U.S.C. § 103(a) over Shinn et al. in view of Daniels in view of Hars in view of Official Notice, and further in view of U.S. Patent 6,574,600 (Fishman et al.). Applicants traverse.

First, applicants maintain and incorporate by reference the arguments presented in the Amendment filed on August 28, 2008 that, even when combined, the references do not teach or suggest the features of the independent claims, and that one of ordinary skill in the art would not have combined them in any event, as well as the arguments presented in the most recent Amendment filed on May 8, 2009.

The independent claims of the present application all require, in effect, an identifier unique to the intended *legitimate destination* of the trading data to be transmitted and announced. Hars, on the other hand, relates to a system and method for preventing illicit copying and processing of digital recordings, and this includes, in particular compact discs (CDs) (see paragraph [0024]). Hars does not disclose or suggest that such a system would include extra information that is

dependent, or relates in any way, to the legal intended destination of the data (digital recording in the case of Hars), which presumably for a CD would be the person who bought the CD in a shop or using an online retailer, for example.

Music CDs for the music industry (referred to in the introduction at paragraphs [0005] and [0006] of Hars) are mass-produced, and CDs of the same album are all identical. While various fillers, including a hum, an advertisement, a bell, a beep, etc. see paragraph [0037] of Hars are mentioned as being inserted, none of these relates to the legal or intended destination of the data, as in the independent claims.

For the legitimate destination of the CD to be included, it would presumably have to be included on the CD at the manufacturing stage. However, this would not be possible because, as CDs are mass-produced, the intended recipient, i.e., the final purchaser in a shop, would not be known during production and so the intended recipient could not be added. What can be added is information *not* dependent on the legitimate destination of the music, such as a hum, an advertisement, a bell, a beep, etc. described at paragraph]][0037] of Hars. Therefore, the invention defined by claims 1, 11, 20, and 27 goes against the teaching of Hars.

Thus, over and above the fact, discussed at length in the previous responses, and incorporated herein by reference, that Hars relates to a *completely different technical field* to that of the present application, and would therefore not be considered by the skilled person, the independent claims relate to providing an audible indication dependent on the legitimate intended recipient (e.g., the trading floor identifier), which is nowhere found in Hars, and which could not be achieved in the context of Hars system. Thus, even if Hars is combined with the other references, it does not teach or suggest the claimed invention.

Also, the Examiner has now taken Official Notice, at page 5, of the first complete paragraph of the Office Action, that "it is old and well known that a filler could be the source of the digital recording (mp3's having breaks in the song saying the source of the download and the rest of the content can be heard)." However, the Examiner does not provide any evidence of this, and in

particular, that this was the case before the priority date (February 21, 2003) of the present application.

Applicant respectfully submits that the Office Action's of taking of Official Notice of these requirements is not a sufficient basis for a §103 rejection because the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known.

It is well established under U.S. Patent Law that prior art rejections must be based on evidence. *Graham v. John Deere Co.*, 383 US 117 (1966). Even if an obviousness rejection is based on the level of ordinary skill in the art, prior art references are needed to show what that level of skill was. *In re Kaplan*, 229 U.S.P.Q. 678, 683 (Fed. Cir. 1986). Such a prior art rejection must be based on a reference or an affidavit from the Examiner, which will be subject to contradiction or explanation by affidavits of the applicant or other persons. MPEP §2144.03.

This requisite evidence has not been provided in the Office Action. Since the Office Action has not provided evidence to support the taking of Official Notice, Applicant respectfully requests that, pursuant to MPEP §2144.03, the Examiner cite a reference or references in support of the Official Notice position taken in the Office Action. Applicant respectfully submits that, without such support evidence, this rejection must be withdrawn.

The need for such documentary evidence for the Examiner's assertion is particularly clear in view of the priority date of the application, and rapid rate of change in the field of mp3 downloads in the last 6 years. Absent such a citation evidencing such knowledge existed prior to the priority date, the Examiner is requested to provide an affidavit to that effect, as required in the MPEP.

Further, even if this unsupported Official Notice is, for purposes of argument, taken into account, the independent claims are not obvious for the following additional reasons.

In the Examiner's unsubstantiated Official Notice, it is the *source* of the digital recording that is the filler. In contrast, as mentioned above, in the claimed invention, it is the

legitimate *destination* of the data that is the basis of the extra information added. So, even the unsubstantiated Official Notice provided in the Office Action fails to provide any teaching or suggestion of the claimed invention of the present application. In any event, as was the case with regard to Hars, the field of mp3 distribution is completely unrelated to the field of the present invention.

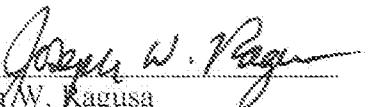
Indeed, if the system and method set forth in the present application audibly announced the *source*, the system *would not work*. This is because the system of the present application works by, in a manner of speaking, naming-and-shaming the recipient of the data, in the case that the recipient is not the legitimate recipient. If the legitimate destination was not announced (i.e., if the source was announced instead, as in the Official Notice example), then this naming-and-shaming aspect would not result.

In view of the foregoing, and the arguments presented in the previous Amendments, the independent claims are believed patentable over the cited art. The dependent claims are believed patentable for at least the same reasons as their respective base claims.

In view of the above amendments and remarks, applicant believes the pending application is in condition for allowance.

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Respectfully submitted,

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